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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,613	01/09/2002	Gerald W. Skulley	M-12283.	6396

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05/26/2004

Peter Hsieh
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EXAMINER

ENSEY, BRIAN

ART UNIT

PAPER NUMBER

2643

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,613

Applicant(s)

SKULLEY, GERALD W.

Examiner

Brian Ensey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 15-20 and 27-32 is/are rejected.
- 7) ☒ Claim(s) 11, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-3, 5, 10, 12, 15, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorike U.S. Patent No. 4,005,278.

Regarding claim 1, Gorike discloses an earphone cushion (12), comprising a first resilient ring having opposite input and output faces, a thickness between the faces, and an opening therethrough defining an interior surface between the faces, the input faces having an associated structure for acoustically coupling the opening to an output face of a speaker, the output face of the first resilient ring being resiliently conformable to a lateral face of an auricle, the interior surface flaring unidirectionally outwardly for at least a portion of the thickness (See Figs. 1 and 10 and col. 8, line 55 through col. 9, line 15).

Regarding claim 2, Gorike further discloses the first ring is annular, oval, elliptical or auricular in shape (See Figs. 1-5).

Regarding claim 3, Gorike further discloses the interior surface flares out in a direction from the input face to the output face (See Fig. 1).

Regarding claim 5, Gorike further discloses the first ring comprises an elastomer (See abstract).

Regarding claim 10, Gorike further discloses the structure associated with the input face of the first ring for acoustically coupling the opening in the first ring for acoustically coupling

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the opening in the first ring to an output face of a speaker comprises the output face of the speaker having an associated flange, the opening at the input face of the first ring being configured to resiliently receive the output face of the speaker in a complementary, slide in, elastic engagement, and the interior surface of the first ring having a flange-retaining recess located adjacent to the input face of the ring and configured to resiliently receive the flange of the speaker in a complementary, over-center, elastic engagement (See Fig. 4).

Regarding claim 12, Gorike further discloses the first ring has at least one circumferential recess between the output face thereof and the flange-retaining recess in the interior surface thereof (See Fig. 40).

Regarding claim 15, Gorike further discloses a cushion in accordance with claim 1 and a speaker having an output face acoustically coupled to the opening of the cushion at the input face thereof (See Figs. 1 and 4).

Regarding claims 16 and 17, Gorike further discloses a headset comprising at least one earphone in accordance with claim 15 and means for acoustically coupling the output face of the cushion to a lateral face of an auricle of a listener wherein the means for acoustically coupling the output face of the cushion to a lateral face of an auricle of a listener comprises a resilient, arcuate band having a first end attached to the at least one earphone (See Fig. 18).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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2. Claims 4, 8 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorike U.S. Patent No. 4,005,278.

Regarding claim 4, Gorike discloses an earphone cushion as claimed. Goike does not expressly disclose the interior surface flares out exponentially. However, Goike teaches an outward flare and it would have been obvious to one of ordinary skill in the art at the time of the invention that the degree of flare is not critical and may conform to any mathematical model with an outward curvature.

Regarding claim 8, Gorike discloses an earphone cushion as claimed. Goike does not expressly disclose the elastomer is foamed with at least one of open and closed cell foams. However, the use of open and closed cell foams is well known in the art and it would have been obvious to one of ordinary skill in the art at the time of the invention to use these well known materials for a comfortable fit to the user.

Regarding claims 18-20, Gorike discloses an earphone cushion as claimed. Goike does not expressly disclose a microphone attached to at least one earphone wherein the microphone is on a boom attached to at least one earphone or on a wire attached to at least one earphone. However, the use of microphones with headsets and attached to the earphone portion is well known in the art and it would have been obvious to one of ordinary skill in the art at the time of the invention to include a microphone to allow for two way communication.

3. Claims 6, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorike as applied to claim 1 above, and in view of Kinoshita, Japanese Patent No. 2001-309478 and in futher view of Holman U.S. Patent No. 6,099,894.

Regarding claims 6, 7 and 9 Gorike does not expressly disclose the elastomer comprises a microcapsules of a material capable of an endothermic phase change at a substantially constant temperature wherein the microcapsules comprise Frisby Thermasorb microcapsules or the first ring comprises Frisby Comfortemp. However, Kinoshita teaches an ear pad material which has a regenerative property to prevent heat build up and Holman teaches microcapsules with phase change properties produced by Frisby. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide ear pad material using the material of Holman to provide maximum comfort to the users.

4. Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorike in view of Kinoshita, Japanese Patent No. 2001-309478 and in further view of Holman U.S. Patent No. 6,099,894.

Regarding claim 27, Gorike discloses an earphone cushion, comprising a first ring having opposing first and second faces defining a thickness therebetween, the first ring defining an opening therethrough, the opening defining an interior surface between the faces, the first face having an associated structure for acoustically coupling the opening to an output face of a speaker and the second face being resiliently comfortable to a lateral face of an auricle (See Figs. 1 and 10 and col. 8, line 55 through col. 9, line 15). Gorike does not expressly disclose the first ring comprises microcapsules of a material capable of an endothermic phase change at a substantially constant temperature. However, Kinoshita teaches an ear pad material which has a regenerative property to prevent heat build up and Holman teaches microcapsules with phase change properties. It would have been obvious to one of ordinary skill in the art at the time of the

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invention to provide ear pad material using the material of Holman to provide maximum comfort to the users.

Regarding claim 28, Gorike further discloses the interior surface flares out unidirectionally from a first face to the second face for at least a portion of the thickness (See Fig. 1).

Regarding claims 29 and 30, Gorike does not expressly disclose the microcapsules comprise Frisby Thermasorb microcapsules or the first ring comprises Frisby Comfortemp. However, Kinoshita teaches an ear pad material which has a regenerative property to prevent heat build up and Holman teaches microcapsules with phase change properties produced by Frisby. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide ear pad material using the material of Holman to provide maximum comfort to the users.

Regarding claim 31, Gorike further discloses the structure associated with the first face of for acoustically coupling the opening to an output face of a speaker includes a flange-retaining recess located adjacent to the first face and configured to resiliently receive a flange of the output face of the speaker in a complementary elastic engagement (See Fig. 4).

Regarding claim 32, Gorike further discloses an earphone comprising the earphone cushion of claim 27 and the speaker having an output face acoustically coupled to the opening of the earphone cushion at the input face thereof (See Figs. 1 and 4).

Allowable Subject Matter

5. Claims 11, 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claim 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 703-305-7363. The examiner can normally be reached on Mon-Fri: 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".


Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKE
May 17,2004


CURTIS KUNTZ
SUPERVISORY PATENT EXAMINER
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